goods, even if they were agents for a third party, they were still liable because they were contracting in such form as to make them personally liable.

After hearing both counsel, on the facts before me, I concluded that the plaintiffs in the present case had a stronger case than the plaintiffs in the abovementioned case. On the affidavit evidence, I found that the quotations, the invoices and the payment vouchers, all made it clear that the contract for the supply and installation of the sound and lighting equipment was between the defendants and the plaintiffs. I also found that there was no evidence that the plaintiffs knew at the time of the contract that the defendants were acting as agents for Entlink. Indeed, there is no reference to this company in any of the documents exhibited to the affidavits in these proceedings. As for the letter from Entlink written after notice of demand had been made by the plaintiffs' solicitors, in my opinion, it was not worth the paper written on. It is enough to say that there was no privity of contract between the plaintiffs and Entlink to sustain that letter. For these reasons, I allowed the appeal with costs. The plaintiffs were entitled to enter judgment as claimed in the writ of summons.

Appeal allowed.

Solicitors : *David Seah & Co.; Khattar Wong & Partners.*

TAN KWEE HAK v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) April 23, 1986]

[Singapore – Magistrate's Appeals Nos. 282 & 285 of 1984]

Penal Code, s. 279 – Driving in a rash manner – Appeal against conviction and sentence – Forfeiture of car – Appeal against forfeiture – Hire-purchase agreement – Whether terminated – Who should get the car – Penal Code (Cap. 103), s.279 – Criminal Procedure Code (Cap. 113), s. 385.

Hire-purchase – Termination of agreement on conviction of hirer – Forfeiture of car – Question of ownership.

Criminal Law and Procedure – Forfeiture of car – Car under hire – Criminal Procedure Code (Cap. 113), s. 385.

The appellant appealed against his conviction and sentence by a Magistrate's Court on a charge of driving a motor car in a manner so rash as to endanger human life, an offence under section 279 of the Penal Code. He was sentenced to five weeks' imprisonment and disqualified from obtaining or holding a driver's licence in respect of all classes of vehicles for five years. The Magistrate also ordered forfeiture of the car under section 385 of the Criminal Procedure Code. The appellant appealed against the forfeiture order. When the prosecution applied for a forfeiture order of the car, Orient Consumers Credit Pte Ltd applied to be heard on the question of forfeiture. It was contended by the company that in accordance with the terms of the Hire-purchase Agreement under which the car was hired out, the agreement had been duly terminated and submitted that the car should not be forfeited but ought to be returned to the company. The company appealed against the forfeiture order.

Held: (1) the trial judge was entitled to find the appellant, Tan Kwee Hak, guilty of the offence charged on all the evidence before him. The appeal against conviction is dismissed;

(2) in the circumstances of the present case the appeal against sentence is allowed. The sentence is set aside and a fine of $1000 is substituted therefor. The order of disqualification is reduced to 3 years;

(3) in all the circumstances of the case, the order of forfeiture should not have been made. The proper order to be made under section 385(2) of the Criminal Procedure Code is that the motor car should be delivered to Orient Consumers Credit Pte Ltd.

MAGISTRATE APPEALS.

M. H. Rubin for the appellant (in Magistrate's Appeal No. 282).

J. Low (Miss) for the appellant (in Magistrate's Appeal No. 285).

Michael Khoo (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. : The appellant in Magistrate's Appeal No. 282 of 1984, Tan Kwee Hak, appeals against his conviction and sentence by a Magistrate's Court on a charge of driving a motor car, a RXY Mazda No EQ 7967R in a manner so rash as to endanger human life, an offence under section 279 of the Penal Code. He was sentenced to five weeks imprisonment and disqualified from obtaining or holding a driving licence in respect of all classes of vehicles for five years.

After the appellant was convicted the prosecution applied for a forfeiture order of the motor car in question. The appellant opposed the application and contended that he was the owner and submitted that the motor car be returned to him. Orient Consumers Credit Pte. Ltd. applied to be heard on the question of forfeiture and it was contended on its behalf that in accordance with the terms of a Hire Purchase Agreement, the agreement had been duly terminated and submitted that the motor car

should not be forfeited but ought to be returned to the Company. The Magistrate made an order of forfeiture. Orient Consumer Credit Pte. Ltd. now appeals against the forfeiture order in Magistrate's Appeal No. 285 of 1984. The appellant is also appealing against the forfeiture.

I propose to deal first with Tan Kwee Hak's appeal against conviction and sentence. The facts are that at about 2.30 on the morning of January 8, 1984 three police officers, PC Rahim, PC Lee Kah Tong and PC Chong Kok Cheong who were attached to the Traffic Enforcement Unit and were there on duty at the junction of Orchard Boulevard and Paterson Road saw three sports cars turning sharply into Orchard Boulevard from Paterson Road in the direction of Grange Road. The appellant was driving the Mazda car with a lady passenger seated beside him. One of the other sports cars was a Porsche car No. ER 4 K driven by Low Kok Tiong and the other was a Lotus car No. SS 20 S driven by Boon Peng Kiong. All three knew each other. The police officers immediately gave chase and saw the three cars were travelling fast, overtaking each other and other vehicles travelling in the same direction by weaving in and out and switching lanes without giving any signals and cutting into the path of other vehicles thereby forcing those vehicles to brake and swerve to avoid a collision.

After the cars had turned into Grange Road they continued to overtake some other vehicles by cutting and forcing into their paths and as they travelled along Napier Road and then along Holland Road before its junction with Farrer Road the three cars continued to overtake other vehicles as well as each other at speeds up to 150 to 160 kmph which were well in excess of the authorised speed of 50 kmph. The prosecution evidence showed that the drivers of these three sports cars were racing with each other in circumstances which clearly amounted to driving in a manner so rash as to endanger human life. The drivers of the Porsche and Lotus cars had also been charged with the same offence and they had pleaded guilty.

The appellant in his defence said that while he did overtake other vehicles he did so in a normal manner and did not weave in and out of other vehicles or cutting sharply into their paths. He said his speed along Orchard Boulevard was about 90 km.p.h. and along Holland Road about 90 to 100 km.p.h. He said that he was not racing with the other two cars but after leaving Grange Road he wanted to catch up with them and had no intention of overtaking them and take the lead. The drivers of the Porsche and Lotus cars gave evidence for the defence and both of them said that they did not see the appellant when they were travelling along Orchard Boulevard on to the Holland Road/Farrer Road junction and that the appellant's car did not overtake their respective cars.

The trial judge accepted the prosecution evidence and found the defendant guilty of the offence as charged. In my judgment it was a finding which the trial judge was entitled to arrive at on all the evidence before him and the appeal against conviction must be dismissed. With regard to the appeal against sentence, the sentences of imprisonment imposed on the drivers of the Porsche and Lotus cars who pleaded guilty to similar charges were on appeal set aside and in the circumstances I allow the appeal against the sentence of five weeks' imprisonment by setting that sentence aside and substituting therefor a fine of $1000/-. The order of disqualification is reduced to 3 years.

I turn now to consider the forfeiture order made under section 385 of the Criminal Procedure Code by the trial judge. It is common ground that the power conferred by section 385 is a discretionary power. This section reads as follows:-

> "385. – (1) During or at the conclusion of an inquiry or trial in any criminal court the court may make such order as it thinks fit for the disposal of any document, livestock or other property produced before it.
>
> (2) The power conferred upon the court by this section includes power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of any property regarding which any offence is or was alleged to have been committed or which appears to have been used for the commission of any offence but shall be exercised subject to any special provisions regarding forfeiture, confiscation, destruction or delivery contained in the Act under which the conviction was had or in any other Act applicable to the case."

In the present case the trial judge in making the order for forfeiture took into consideration that the appellant was in a good financial position to purchase the car which was valued at $47,760.00. He also took into consideration that although the offence was committed only two months after its purchase, the appellant had continued paying the monthly instalments after the car was impounded. The monthly instalments of $1,573.00 were payable to the claimant Orient Consumers Credit Pte. Ltd. on a hire purchase agreement under which the appellant undertook to pay 24 monthly instalments of $1,573.00. The trial judge found that "by ordering the forfeiture of this motor car this Court

would be imposing an additional penalty of $25,168 on the (appellant)" but nonetheless came to the conclusion that an order of forfeiture would not "create an additional excessive overall penalty." He arrived at that conclusion because the appellant was a person who had "(bought) an expensive sports car but has no regard for the safety of others" and had no reason to drive it rashly and thereby putting the life and safety of other road users at jeopardy.

In my judgment that reason may well be a proper reason for disqualifying the appellant from driving motor vehicles but not a proper reason for ordering forfeiture of the car in question and in all the circumstances of the case I am of the opinion that the order of forfeiture should not have been made.

There remains the question as to whom the motor car in question should be ordered to be delivered to. On the undisputed evidence adduced by Orient Consumers Credit Pte. Ltd. that it had duly terminated the Hire-Purchase Agreement and therefore had the right to possession of the motor car I am of the opinion that the proper order to be made under the provisions of section 385(2) of the Criminal Procedure Code is that the motor car No. EQ7967R be delivered to Orient Consumers Credit Pte. Ltd.

Order accordingly.

Solicitors: *Amarjit Rubin & Partners; Michael B.B. Ong & Co.*

TAY TUAN KIAT & ANOR. v. PRITAM SINGH BRAR

[O.C.J. (Thean J.) July 10, 1986]

[Singapore – Suit No. 3552 of 1977]

Tort – Trespass – Adjoining property – Retaining wall and structure encroaching on plaintiffs' land – Whether cause of action is barred by Limitation Act – Defence of laches – Mandatory injunction – Nominal damages – Limitation Act (Cap.10), ss. 6 & 12.

Limitation – Doctrine of laches – Trespass to land – Limitation Act (Cap.10), ss. 6 & 12.

The plaintiffs are the owners of the property at 18, First Avenue, Singapore. The defendant is the owner and occupier of the adjoining property at No. 15, Second Avenue, Singapore. The plaintiffs' house faces the First Avenue and the defendant's house faces the Second Avenue and they share a common boundary at the back of the respective houses. Before the defendant purchased the property there was no retaining wall except a small white inlet wall. There was however a fence separating the two houses and next to the fence there were a hedge and lalang. Immediately or soon after his purchase (on March 7, 1967) the defendant removed the fence, hedge and lalang separating the two properties and built a retaining wall in their place. The bottom of the retaining wall rested on the plaintiffs' property. There was also a structure built on the defendant's premises which encroached on the plaintiffs' property. In 1974 the plaintiffs discovered these encroachments and in 1975 they requested the defendant to remove the wall and structure. The defendant, however, took no action.

On December 5, 1977 the plaintiffs' took out a writ against the defendant. They pleaded that the defendant had wrongfully built the retaining wall on the plaintiffs' land and thereby trespassed on the plaintiffs land and wrongfully remained in possession of the portion of the land occupied by the retaining wall and the plaintiffs have thereby been deprived of the use and enjoyment of the said portion of the land. The defendant claimed that the plaintiffs' action is barred by the Limitation Act. His counsel submitted that the claim of the plaintiffs was for damages for trespass and not for recovery of possession of their property and the relevant period of limitation was 6 years from the date the cause of action accrued. The defence of laches was also raised by the defendant. There was, however, no dispute as to the fact that the retaining wall encroached on the plaintiffs' land.

Held: (1) the limitation period is 12 years under section 9 of the Limitation Act and not 6 years. Even assuming that the claim is for damages for trespass, it has still not been time-barred; the trespass complained of is that caused by the retaining wall constructed by the defendant on the plaintiffs' property and the wall is still encroaching on their property; in other words the trespass is continuing;

(2) the doctrine of laches is not applicable where, as here, there is an express provision stating the limitation period;

(3) the relief asked for by the plaintiffs, namely that the defendant do pull down and remove the retaining wall and erect a new wall in place thereof but within the boundary of the defendant's land, amounts to a mandatory injunction. In the present circumstances the injunction should not be granted. The defendant should, however, remove the chain-link fence which is at the top of the retaining wall and erect it along the common boundary without encroaching on the plaintiffs' property. The defendant should also remove the structure that encroaches on the plaintiffs' land;

(4) since there is no evidence that the plaintiffs had suffered any damages or loss as a result of the trespass, nominal damages of $500.00 should be awarded to the plaintiffs.

Cases referred to:

(1) *Re Pauling's Settlement Trusts* [1961] 3 All E.R. 713, 735; [1964] Ch. D. 303, 353.

(2) *Redland Bricks Ltd.* v. *Morris & Anor* [1970] A.C. 652, 665.